

Adrian Riskin,

Judge Mary Strobel
Hearing: July 17, 2018

v.

*Hollywood Media District Property
Owners Association,*

BS166075

Tentative Decision on Motion for
Attorneys' Fees

Petitioner Adrian Riskin ("Petitioner") seeks attorney's fees in the amount of \$48,360.00 pursuant to Government Code section 6259(d). Petitioner's writ of mandate pursuant to the Public Records Act was granted in part on January 30, 2018, and judgment entered March 5, 2018.

Procedural History

On November 14, 2016, Petitioner filed his verified petition for writ of mandate. On September 28, 2017, Petitioner filed his opening brief and administrative record. On October 27, 2017, Respondent filed its opposition brief and supplemental administrative record. On November 13, 2017, Petitioner filed his reply and supplemental administrative record.

The petition came for hearing on November 28, 2017. The court adopted its tentative ruling as the order of the court, with certain modifications made based on argument at the hearing. The court issued the following order:

Respondent is ordered to produce a privilege log identifying the responsive records it has withheld and the claimed exemptions for each record. Respondent should also file and serve a supplemental opposition, not to exceed 7 pages. Petitioner may file and serve a supplemental reply, not to exceed 7 pages. The supplemental opposition and reply should only address the claimed exemptions, and not any other issues....

Respondent is also ordered to review all files from the latest search to ensure that all responsive documents have been produced.

Counsel for respondent is to file a declaration and log produced to petitioner by January 11, 2018. (Court File, Minute Order filed 11/28/17.)

The court set a status conference for January 30, 2018.

After the January 30, 2018 hearing, the court ordered Respondent to provide access to, or produce copies of the following documents, previously claimed as exempt:

1) all e-mails withheld pursuant to the Deliberative Process Privilege; 2) all emails withheld pursuant to the Drafts exemption; and 3) all emails withheld pursuant to the Personnel Privacy exemption, redacted to exclude private personnel health information and volunteer's address.

Petitioner is a Prevailing Party

In a CPRA action, "the court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section." (Gov. Code § 6259(d).) Under the CPRA, an award of attorney's fees to a prevailing plaintiff is mandatory. (*Fontana Police Dept. v. Villegas-Banuelos* (1999) 74 Cal.App.4th 1249, 1252.)

Respondent argues that Petitioner did not prevail because he did not achieve his primary purpose of the litigation – to obtain a court order requiring Respondent to conduct another search, and a declaration that the search previously conducted was legally inadequate. Respondent also argues that the documents obtained were so minimal and insignificant compared to what Petitioner sought in the Petition, the court should conclude Petitioner did not prevail. While Petitioner did not obtain the full relief he was seeking, the lawsuit did result in Respondent producing additional documents. Under these circumstances, Petitioner is the prevailing party.

"A plaintiff prevails within the meaning of the [CPRA] 'when he or she files an action which results in defendant releasing a copy of a previously withheld document.'" (*Los Angeles Times v. Alameda Corridor Transp. Authority* (2001) 88 Cal.App.4th 1381, 1391; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898). Respondent has not persuasively shown that the documents which were ordered to be produced were so minimal and insignificant so as to support a denial of attorneys' fees. Petitioner obtained records such as draft meeting agendas, information regarding a dog bite incident and LAPD's response, committee vacancies, bylaws, and a project presentation. Petitioner published the records to his website. The court does not conclude that these documents are so trivial that they support departure from the rule that a prevailing Petitioner in CPRA litigation is entitled to attorneys' fees.

Reasonable Amount of Attorney's Fees

"The determination of what constitutes a reasonable fee generally 'begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate....' [T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award...." (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154.)



Respondent seek attorneys' fees for 71.9 hours of work on this matter, at the rate of \$650.00/hour, for a total award of \$48,360.00. Petitioner's counsel claims that in determining the 71.9 hours, she discounted the number of hours by approximately 20% to account for the failure to obtain a court order to conduct an additional search.

Hourly Rate

Petitioner presents evidence, in the form of declarations from his counsel, and an expert, that \$650/hour is a reasonable rate for attorney Flynn's work. Respondent argues that the hourly rate should be no greater than \$350/hour, the fee charged by Respondent's counsel.

Ms. Flynn was admitted to practice in 2004, and has worked primarily as a civil rights attorney. She also has experience in litigating Public Records Act and FOIA cases. (See Flynn declaration). Flynn declares that in past litigation, she has been awarded attorneys' fees at the rate of \$590/hour, and \$400/hour in 2016 and 2015.

Taking into account the Flynn, Sobel, and Briggs declarations, as well as the court's familiarity with reasonable rates charged for this type of litigation in this legal community, the court finds that \$600/hour is a reasonable hourly rate.

Amount of Time Spent

"The verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396.) If the motion is supported by evidence, the opposing party must respond with specific evidence showing that the fees are unreasonable. (*Premier Med. Mgmt. Sys. v. California Ins. Guarantee Ass'n* (2008) 163 Cal.App.4th 550, 560-63.) The Court has discretion to reduce fees that result from inefficient or duplicative use of time. (*Horsford* at 395.)

Respondent does not challenge particular billing entries as duplicative, or inefficient. Rather, Respondent argues that given Petitioner's limited success, the hours claimed are excessive, and Petitioner should be compensated only for 11% of the total hours expended. Respondent focuses on the assertion that the issue of exemptions was not raised until late in the litigation, and that Petitioner never sought to informally resolve that issue prior to filing suit.

The court agrees that the degree of Petitioner's success is a factor the court may consider in determining an award of reasonable attorneys' fees under the CPRA. (See *Bernardi v. County of Monterey*, 167 Cal. App. 4th 1379, 1398). The court disagrees, however, that the fact the issue of exemptions was framed later in the litigation supports such a drastic reduction. The litigation did result in previously withheld documents being produced. Taking into account the manner in which the litigation was conducted

and considering the results achieved, the court concludes that \$30,000 is a reasonable award of attorneys' fees in this matter.¹

Cost bill

Although Respondent did not file a motion to strike or tax costs, the parties appear to interpret their stipulation to allow Respondent to challenge costs in his opposition to the motion for attorneys' fees. Respondent contends that Petitioner is entitled to no costs, as she did not prevail. As discussed above, the court disagrees. The only specific item of costs Respondent challenges is \$323.75 for deposition costs. In reply, Petitioner agrees that he is not seeking reimbursement for the cost of the deposition. The cost bill is taxed in the amount of \$323.75 for a total award of costs of \$74.45.²

¹ The court finds it unnecessary to discuss Respondent's arguments concerning Petitioner's motivation in seeking the records at issue or Petitioner's assertion of First Amendment defenses. (*Los Angeles Unified School District v. Sup. Ct.* (2014) 228 Cal.App.4th 222, 242 ["The motive of the particular requester in seeking public records is irrelevant"]; see Gov. Code § 6257.5.)

² \$6.45 for service of process plus \$68 for court-ordered transcripts.